

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

AARON STORM, Plaintiff, vs. CITY OF BROOKINGS, Defendant.	CIV. # <u>19-4175</u> COMPLAINT AND DEMAND FOR JURY TRIAL
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COMES NOW the Plaintiff, Aaron Storm, and for his Complaint against the above-named Defendant, states and alleges as follows:

PARTIES

1. Plaintiff Aaron Storm is a resident of Humble, Texas.
2. Defendant City of Brookings is and, at all times relevant hereto, was a municipality in the State of South Dakota. Defendant is the county seat of Brookings County. Defendant City owns and maintains exclusive control over all of the public parks located within the City limits, including, but not limited to Larson Park located at 22nd Avenue South and Eastbrook Drive, Brookings, South Dakota, 57006.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the persons and subject matter of this action pursuant to the provisions of 28 U.S.C. § 1332 because the amount of damages in controversy exceeds \$75,000, exclusive of interest and costs, and complete diversity of citizenship is present between Plaintiff and Defendant.

4. This action is properly venued with this Court pursuant to the provisions of 28 U.S.C. § 1391(b)(2) because the cause of action occurred in the Southern District of the State of South Dakota.

FACTS

5. On or about November 17, 2018, Plaintiff was seriously injured while sledding at Larson Park.

6. Upon information and belief, Defendant allows the hill at Larson Park, including the south side of the hill, to remain open during the winter for recreational purposes such as sledding.

7. Upon information and belief, residents of Brookings and guests to Brookings often sled on the Larson Park hill when snow is present.

8. The hill at Larson Park, including the south side of the hill, is an unreasonably dangerous attraction and poses a substantial risk of serious physical harm to individuals who sled down the hill like Plaintiff.

9. Defendant created the dangerous condition of the drainage ditch near the bottom of the south side of the Larson Park hill.

10. Defendant did not post any notices, signs, or warnings that indicated that sledding down the south side of the Larson Park hill was prohibited. Defendant also did not post any notices, signs, or warnings that either informed the public that the south side of the hill was unsuitable for sledding or that informed individuals of the risks of sledding down the south side of the hill.

11. Plaintiff was injured while sledding down the south side of the hill at Larson Park when his sled came into contact with the drainage ditch near the bottom of the hill. As the sled hit the front of the drainage ditch, the sled became airborne causing the sled to land on the far edge of the drainage ditch. Plaintiff landed directly on his tailbone on the edge of the drainage ditch.

12. Upon information and belief, before Plaintiff's injury, Defendant knew that other people were injured sledding down the hill at Larson Park.

13. As a result of the incident, the Plaintiff fractured his back and sustained injuries and damages including, but not limited to, personal injuries which required medical treatment and surgery. Additionally, he has experienced pain and suffering, permanent impairment and disability, loss of enjoyment of the capacity of life, loss of past and future earned wages, past and future medical costs and expenses, and other general and special damages.

COUNT ONE
Negligence

14. Plaintiff hereby realleges paragraphs 1-13 of this Complaint and hereby incorporates them by reference as if fully set forth herein.

15. Defendant owed a duty of care to Plaintiff to exercise ordinary care and awareness in the operations, management, maintenance, and control of Larson Park, including, but not limited to, a duty to inspect and maintain the park in a safe and reasonable manner and a duty to warn, remove, and/or repair any dangerous condition in the park.

16. Defendant negligently departed from the proper standard of care, which caused Plaintiff's injuries. Defendant breached its duties owed to Plaintiff by negligently maintaining Larson Park, in several respects, including, but not limited to:

- (1) Failing to inspect the park for dangerous conditions;
- (2) Failing to mark or block off the drainage ditch on the south side of the hill;
- (3) Failing to warn of dangerous conditions on the south side of the hill; and
- (4) Otherwise generally failing to maintain or keep the park in a reasonably safe condition.

17. Defendant's operation of Larson Park was negligent and is the direct and proximate cause of the injuries and damages sustained by Plaintiff.

18. As a direct and proximate cause of Defendant's negligence, Plaintiff has sustained injuries, including, but not limited to, personal injuries resulting in a course of medical treatment; permanent impairment, disability; disfigurement, past, present, and future pain and suffering; loss of enjoyment of the capacity of life, emotional distress; past and future medical costs and expenses; and other general and special damages; all of which are compensable under South Dakota law.

COUNT TWO
Gross Negligence

19. Plaintiff hereby realleges paragraphs 1-18 of this Complaint and hereby incorporates them by reference as if fully set forth herein.

20. Defendant owed a duty of care to Plaintiff not to engage in reckless, willful, wanton conduct in the operations, management, maintenance, inspection, and control of Larson Park.

21. Defendant recklessly, willfully and wantonly departed from the proper standard of care which caused Plaintiff's injuries. Defendant breached its duties owed to Plaintiff by recklessly operating Larson Park and by recklessly failing to inspect, maintain, repair, and/or remove any dangerous condition in the park and by failing to warn Plaintiff of any dangerous condition in the park.

22. Defendant's operation of Larson Park was grossly negligent and the proximate cause of the injuries and damages sustained by Plaintiff.

23. As a direct and proximate cause of Defendant's gross negligence, Plaintiff has sustained injuries, including, but not limited to, personal injuries resulting in a course of medical treatment; permanent impairment, disability; disfigurement, past, present, and future pain and suffering; loss of enjoyment of the capacity of life, emotional distress; past and future medical costs and expenses; and other general and special damages; all of which are compensable under South Dakota law.

WHEREFORE, Plaintiff respectfully prays for damages against Defendant as follows:

- (1) For Plaintiff's compensatory, general, special, and punitive damages in an amount that the jury deems just and proper under the circumstances;
- (2) For Plaintiff's costs and disbursements herein;
- (3) For pre-judgment and post-judgment interest; and

- (4) For such other and further relief as the Court determines to be just and proper.

Dated this _15th_ day of October, 2019.

**JOHNSON, JANKLOW,
ABDALLAH & REITER, L.L.P.**

BY /s/ Shannon R. Falon

Pamela R. Reiter (pamela@janklowabdallah.com)

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P.O. Box 2348

Sioux Falls, SD 57101-2348

(605) 338-4304

Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby respectfully demands trial by jury on all issues so triable.

/s/ Shannon R. Falon

Pamela R. Reiter

Shannon R. Falon

Anthony P. Sutton

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

AARON STORM

(b) County of Residence of First Listed Plaintiff **HARRIS CO, TEXAS**
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Pamela R. Reiter, Shannon Falon & Anthony Sutton
Johnson, Janklow, Abdallah & Reiter, LLP
Post Office Box 2348; Sioux Falls SD 57101; (605) 338-4304

DEFENDANTS

CITY OF BROOKINGS

County of Residence of First Listed Defendant **BROOKINGS**
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1332

Brief description of cause:
Negligence and gross negligence

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint.

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

10/14/19

SIGNATURE OF ATTORNEY OF RECORD

Shannon R. Falon

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE